SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JUL 28 2015
ARTHUR JOHNSTON
BY ________ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 2:15cv102KS-MTP
	)	
v.	)	
	)	
CITY OF PETAL, MISSISSIPPI,	)	
	)	
Defendant.	)	

COMPLAINT

The United States of America alleges as follows:

INTRODUCTION

1. The United States brings this action for declaratory and injunctive relief, and monetary damages and a civil penalty, against the City of Petal, Mississippi (the "City"), under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended ("FHA"), 42 U.S.C. §§ 3601 *et seq.*, and Titles II and V of the Americans with Disabilities Act of 1990, as amended ("ADA"), 42 U.S.C. §§ 12131-12134, 12203, and Title II's implementing regulation, 28 C.F.R. Part 35. The complaint alleges that the City discriminated on the basis of disability when it refused to allow three men with disabilities to reside together in their home in Petal, in Forrest County, under the same terms and conditions as residents without disabilities. Further, through its actions and implementation of its zoning ordinance, the City engaged in a pattern or practice of discrimination because of disability in violation of the FHA and the ADA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and may grant the relief sought herein pursuant to 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. § 3614(a); 42 U.S.C. §§ 12133 and 12134;

and 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper under 28 U.S.C. § 1391 because the events or omissions giving rise to the claims alleged herein occurred in the Southern District of Mississippi and because the Defendant and the property at issue in this action are located there.

DEFENDANT

4. Defendant City of Petal, located in Forrest County, is a unit of government organized under the laws of the State of Mississippi, and is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. § 12131, *et seq.*, and it implementing regulation, 28 C.F.R. Part 35.

5. The City is governed by a mayor and a seven-member Board of Aldermen (the "Board").

6. The City's Planning Commission (the "Commission") is responsible for the approval of applications for conditional use permits, variances, and other zoning matters. The Commission members are appointed by the Mayor and the Board.

7. The Commission makes recommendations to the Board regarding land use and development proposals under the City's Comprehensive Zoning Law (the "CZL"). The City's seven-member Board hears appeals of zoning decisions issued by the Planning Commission.

FACTUAL ALLEGATIONS

8. The City's CZL specifies five residential districts: RF (Rural Fringe District); R-1 (Low-Density Residential); R-2 (Low-Medium-Density Residential); R-3 (Medium-Density Residential); and R-4 (High-Density Residential). City of Petal CZL, Article VI. Single-family dwelling use is permitted by right in all residential districts.

9. Until November 2014, the CZL § 5.23, defined "family" as: "One or more

persons occupying a dwelling unit and living as a single housekeeping unit, not exceeding four (4) persons unless related by blood, marriage, or adoption, and not including a group occupying a hotel, club, boarding, lodging, fraternity, or sorority house; institution for human care; or other similar building."

10. Until November 2014, the CZL did not include a definition of the term "group home." The CZL listed "group home" (without definition) as a conditional use, *i.e.*, subject to approval by the City Planning Commission, in the "C-O Commercial Office District."

11. Brandi's Hope Community Services, LLC ("BHCS") is a Mississippi-based limited liability company that provides housing and support services for persons with intellectual disabilities. BHCS's principal place of business is in Magee, Simpson County, Mississippi.

12. BHCS provides twenty-four hours per day in-home assistance to help persons with disabilities live independently in community-based housing. BHCS's services include providing transportation, supervision, and housekeeping assistance.

13. Danny O. Cowart ("Cowart") is the owner and sole member of BHCS.

14. In October 2012, BHCS submitted applications with the Mississippi Department of Mental Health ("DMH"), seeking the State's approval of a plan to provide housing to three residents with intellectual disabilities in Petal. The DMH approved the application in November 2012, and informed Mr. Cowart that he could proceed to make arrangements to provide housing according to his proposal. He began looking for suitable housing and for a site for a day center, which would provide local support to BHCS's clients.

15. In the fall of 2012, Mr. Cowart called the City's Building Department Director (the "Director"), to inquire whether the property located at 8 West Temple Road and 1075 Sunrise Road in Petal (the "subject property") was suitable for use as a day center to provide

support and activities for persons with disabilities. The subject property, which contains two dwellings, comprises approximately 1.17 acres on two separate tax parcels.

16. The Director advised Mr. Cowart that a day center would not be appropriate at the subject property because the R-1 zone permitted only residential use. Mr. Cowart decided instead to use the property as a residence, in part based on the advice of the Director.

17. In or about November 2012, Scioto Properties SP-15, LLC ("Scioto"), an Ohio-based limited liability company, purchased the subject property for the purpose of making it available as a residence for persons with disabilities. Scioto's business involves purchasing, renovating, and leasing properties for use by individuals with disabilities as community-based housing.

18. In or about November 2012, BHCS leased the subject property from Scioto with the intention of establishing a residence for three persons with disabilities.

19. In approximately November 2012, the DMH identified three men (the "Residents") as eligible to move to the subject property with appropriate support. The Residents, all life-long Mississippi residents, were adult men with intellectual disabilities.[1] Each of the men previously lived at the Ellisville State School, located at 1101 Old Highway 11, Ellisville, Mississippi 39437 ("Ellisville"). Ellisville is a large congregate facility operated by the Mississippi State Department of Mental Health ("DMH"), which provides residential care and services to individuals with intellectual disabilities.

20. According to officials of the DMH, DMH is working to strengthen the state's compliance with the ADA and the requirements of *Olmstead v. L.C.*, 527 U.S. 581 (1999), the United States Supreme Court decision requiring that individuals with disabilities, including

[1] On October 3, 2014, one of the residents died.

mental illness and developmental disabilities, receive services and support in the most integrated setting appropriate to their needs. DMH's decision to move these individuals from a large congregate facility to a single-family residence is consistent with *Olmstead.*

21. On or about November 27, 2012, the Residents moved into the three-bedroom single-family dwelling located at 8 West Temple Road. The DMH assisted in the placement of the Residents at the subject property and provided support services during their transition to community-based living.

22. The Residents pay rent and utility fees under a written agreement with BHCS. The Residents purchase their own groceries and each participates in the planning and preparation of meals, individually and together as a family, with the assistance of support from BHCS employees as necessary. Beginning in or about April 2013, BHCS has permitted two BHCS employees to reside at the home located at 1075 Sunrise Road to provide night-time assistance to the Residents as needed.

23. On or about November 27, 2012, residents of Petal notified the City of "possible group home activity" at the property.

24. On November 28, 2012, the City posted a red sign on the Sunrise portion of the subject property notifying the owner that there was a violation of the City's zoning ordinance. The sign read:

> **1075 SUNRISE ROAD**, PARCEL #3-032A-03-112.00 & 3-032A-03-112.01, THIS PROPERTY HAS BEEN DEEMED AS FOLLOWS: **ILLEGAL** OCCUPATION OF PROPERTY AS A GROUP HOME OR SIMILAR LIVING FACILITY AND DIRECT **VIOLATION** OF THE OFFICIAL ZONING ORDINANCE OF THE CITY OF PETAL. PLEASE CALL (601) 544-6048 FOR FURTHER INFORMATION. [Emphasis in original].

25. On December 3, 2012, the City posted a second notice (this time on the door of the West Temple property as well as on the Sunrise home), indicating that the use of the house violated the City's zoning ordinance as follows:

> **NOTICE TO PROPERTY OWNER(S) OF 1075 SUNRISE ROAD:** This property is within the city of Petal city limits and is **not** properly zoned for a group home or similar living quarters. For additional information please contact the Building Department at (601) 544-6048. [Emphasis in original].

26. In or about December 2012, the Director wrote the following statement in her official Building Department file regarding the property:

> Occupation of these properties as a group home/transitional living, etc., are prohibited by the City of Petal according to the Official Zoning Ordinance of the City of Petal, MS, Ordinance 1979(42). The properties are in an R-1 (Low Density Residential) zoning, and only the uses listed in Section 6.02 of Ordinance 1979(42) are permitted in the zoning classification. Penalties/remedies for said violation are listed in Article XIII of [the ordinance].
>
> The City of Petal was informed of possible activity for a group home at this property by residents of the neighborhood on November 27, 2012. Ownership of the property was not known at this time, however, the Building Department posted notices on both structures that occupancy as a group home or similar living facility was prohibited. The signs were posted on November 28, 2012. . . .

27. On December 3, 2012, the Director signed an affidavit in which she swore that Danny Cowart "did purposely and willfully fail to comply with City Zoning Ordinances to wit: Illegal occupation of property as a group home or similar living facility and direct violation of the official zoning ordinance of the [C]ity of [P]etal . . . . "

28. On December 4, 2012, a municipal court judge of the City issued a warrant for Mr. Cowart's arrest pertaining to a misdemeanor criminal violation of the CZL.

29. On December 7, 2012, Mr. Cowart and his attorney reported in person to the City's Police Department to respond to the arrest warrant. The City Police Department permitted Mr. Cowart to leave on his own recognizance and that of his attorney.

30. The City set Mr. Cowart's criminal trial in the Petal Municipal Court for April 2, 2013, on the charge: "MC12-00335, Violation of City Zoning Ordinance."

31. On January 10, 2013, Mr. Cowart, through counsel, filed an appeal of the zoning enforcement action that the City had initiated against him, on behalf of himself, Scioto, BHCS, and the Residents.

32. By letter dated January 10, 2013, Mr. Cowart formally requested a reasonable accommodation[2] on the basis of disability to the City's zoning ordinance to enable the Residents to remain in their home.

33. On February 12, 2013, the City Planning Commission conducted a hearing on Mr. Cowart's and BHCS's appeal of the City's zoning decision. Mr. Cowart's attorney asserted that the Residents met the definition of "family" as set forth in the CZL.

34. During the February 12, 2013 hearing, the City's Mayor denied that the Residents were a "family," stating that only "people who are related by blood" are a family.

35. At the February 12, 2013 hearing, Mr. Cowart's attorney requested that, if the City was unwilling to categorize the Residents as a "family" under the zoning ordinance, then the City should grant a reasonable accommodation on the basis of disability to allow the Residents to live in the home.

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[2] The term "reasonable accommodation" as used in this Complaint refers, collectively, to "reasonable accommodations" under the FHA and the technical phrase "reasonable modifications" as used in the implementing regulation for Title II of the ADA at 28 C.F.R. § 25.130(b)(7).

36. At the February 12, 2013 hearing, one Commissioner expressed the opinion that the Residents' use was allowed under the City's ordinance:

> Our ordinance clearly says that they can have up to four non-related people living in a home and it's considered family. That's what our ordinance says. Our law says that. They only have three. If they had five, then they would be in violation of our ordinance and I would be against it. I also agree that we have absolutely no description in our ordinance as to what constitutes a group home. And we are accusing them of having a group home.

37. At the conclusion of the February 12, 2013 hearing, the Planning Commission voted 3-2 against permitting the Residents to remain in their home and recommended that the Board of Aldermen sustain the decision of the Building Department and deny the Cowart and BHCS Appeal.

38. On March 5, 2013, Cowart and BHCS filed a Notice of Appeal to the Mayor and Board of Aldermen, and renewed their reasonable accommodation request.

39. On October 15, 2013, the Board of Aldermen conducted a hearing on the Cowart/BHCS Appeal of the Building Department's decision, as upheld by the Planning Commission. Counsel for Mr. Cowart and BHCS reiterated at the hearing that the Residents meet the City's zoning ordinance's definition of family and underscored that the CZL did not contain a definition of "group home," although the Building Department accused Mr. Cowart of operating one.

40. During the October 15, 2013 hearing, City officials expressed concerns about, among other things, the commercial nature of BHCS's interest in the subject property, the fear that the Residents could be violent and dangerous, and whether the residents ". . . fit[ ] the character of the neighborhood."

41. At the conclusion of the October 15, 2013 hearing, the Board voted unanimously (7-0) to uphold the decision of the Planning Commission that BHCS is in violation of the zoning ordinance.

42. After the conclusion of the October 15, 2013 vote, one Board Member made a motion "that we make a reasonable accommodation for them for a period of six months." The Mayor repeated the motion as follows: "Okay. There's a motion to allow them to remain as a reasonable accommodation for six months to find other residence." The motion passed 7-0 and was adopted in November 2013. Thus, the City imposed a deadline for the Residents to leave their home by April 15, 2014 ("deadline").

43. The Board's decision to grant the Residents a "reasonable accommodation" requiring that they move out of their home in the City at the expiration of six months was unreasonable in that it failed to make accommodations in the City's rules, policies, practices, procedures, or services, when such an accommodation was necessary to avoid discrimination on the basis of disability and to afford the Residents an equal opportunity to use and enjoy the subject premises.

44. At the expiration of the six-month deadline by which the City demanded that the Residents move from the subject premises, the attorney for Scioto and BHCS contacted the City to inquire about the status of the City's efforts to evict the Residents. On or about April 17, 2014, the City informed Scioto's and BHCS's attorney by telephone that at that time the City would not pursue its enforcement action.

45. The City did not formally seek dismissal of its criminal prosecution against Mr. Cowart until November 2014, in response to the United States' investigation.

46. The residence at 8 West Temple Road is a "dwelling" within the meaning of

42 U.S.C. § 3602(b), and the Residents of the home are persons with disabilities within the meaning of 42 U.S.C. § 3602(h).

47. The Residents meet the definition of a "family" for purposes of the CZL. A "family" is permitted to occupy a dwelling in an R-1 zone as of right.

48. However, the City refused to allow the Residents to live by right in the dwelling at 8 West Temple Road based on their intellectual disabilities.

49. Under 42 U.S.C. § 3604(f)(3)(B), municipalities are required to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

50. Even if the Residents did not meet the definition of "family" for purposes of the CZL, their request to be treated as a "family" for purposes of living together in an R-1 zone is a reasonable accommodation.

51. Mr. Cowart, BHCS, and Scioto have aided or encouraged persons in the exercise or enjoyment of rights granted or protected by the FHA.

52. The Residents are "qualified individuals with disabilities" within the meaning of the ADA, 42 U.S.C. §§ 12102 and 12131(2) and 28 C.F.R. § 35.104. Mr. Cowart, BHCS, and Scioto are associated with the Residents for purposes of the ADA.

53. Defendant City of Petal is a public entity within the meaning of the ADA, 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104.

54. Mr. Cowart, BHCS, and Scioto have aided or encouraged individuals in the exercise or enjoyment of rights granted or protected by the ADA.

55. The Department of Justice is the federal agency responsible for administering and enforcing Titles II and V of the ADA, 42 U.S.C. §§ 12131-12134, 12203 and 28 C.F.R. Part 35,

and is authorized to bring this action under 42 U.S.C. §§ 2000e-5(f)(1), 12133, and 12134. The Attorney General has commenced this action based on reasonable cause to believe that a person or group of persons has been discriminated against and that such discrimination raises issues of general public importance. 42 U.S.C. § 12133. The United States seeks declaratory and injunctive relief and compensatory damages against the City.

56. All conditions precedent to the filing of this Complaint have occurred or been performed.

57. At all times relevant to the Complaint, the CZL and applicable Planning Commission policies did not include a procedure allowing reasonable accommodations that may be necessary to avoid discrimination on the basis of disability and to afford persons with disabilities equal opportunities to use and enjoy dwellings.

58. At all times relevant to the Complaint, the CZL permitted up to four unrelated persons living as a single housekeeping unit in a dwelling to live as of right in the R-1 residential zoning district, without being burdened with conditional use or variance requirements under the CZL.

59. However, in practice, the City did not permit up to four unrelated persons with intellectual disabilities living as a single housing keeping unit in a dwelling to live as of right in the R-1 residential zoning district under the CZL.

60. The City thus imposed greater burdens on unrelated City residents with intellectual disabilities who live as single housekeeping units than it did on unrelated City residents without disabilities.

61. The City has no valid justification for its policy of distinguishing between "families" of persons without disabilities and "families" of persons with disabilities in its implementation of the CZL.

CLAIMS FOR RELIEF

Count I: Violations of the Fair Housing Act

62. The allegations listed above are incorporated herein by reference.

63. Defendant City of Petal's actions described above constitute:

a. discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling because of disability, in violation of the FHA, 42 U.S.C. § 3604(f)(1);

b. discrimination in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of disability, in violation of the FHA, 42 U.S.C. § 3604(f)(2);

c. a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person an equal opportunity to use and enjoy a dwelling, in violation of the FHA, 42 U.S.C. § 3604(f)(3)(B); and

d. interference with the rights of persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged persons with disabilities in the exercise or enjoyment of rights granted or protected by the FHA, in violation of 42 U.S.C. § 3617.

64. Defendant City of Petal acted intentionally, willfully, and in disregard for the rights of others.

65. Defendant City of Petal's actions described above constitute a pattern or practice

of resistance to the full enjoyment of rights granted by the Fair Housing Act, or a denial of rights protected by the Fair Housing Act to a group of persons, which denial raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

66. The Residents, Danny Cowart, Scioto, BHCS's prospective clients, and other persons who may have been the victims of Defendant City of Petal's discriminatory conduct are "aggrieved persons" within the meaning of 42 U.S.C. §§ 3602(i) and 3614(d)(1)(B), and have suffered harm and damages as a result of Defendant's conduct.

Count II: Violations of the Americans with Disabilities Act

67. The allegations listed above are incorporated herein by reference.

68. Defendant City of Petal's actions described above:

a. constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35;

b. excluded individuals with disabilities from participation in and denied them the benefits of the services, programs, or activities of a public entity on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(a);

c. afforded qualified individuals with disabilities an opportunity to participate in or benefit from the services of a public entity that were not equal to those afforded others, in violation of Title II of the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(1)(ii);

d. otherwise limited a qualified individual with a disability in the enjoyment of a right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(1)(vii);

e. failed to make reasonable modifications in policies, practices, or procedures necessary to avoid discrimination on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(7);

f. utilized methods of administration that had the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(3);

g. excluded or otherwise denied equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(g); and

h. interfered with an individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the ADA, in violation of Title V of the ADA, 42 U.S.C. § 12203(b).

69. Defendant City of Petal acted intentionally, willfully, and in disregard for the rights of others.

70. Cowart, Scioto, BHCS's prospective clients, and other persons who suffered harm and damages as a result of the City's discriminatory actions are aggrieved persons under the ADA. 42 U.S.C. § 12203(c).

WHEREFORE, the United States prays that the Court enter an ORDER:

a. Declaring that the Defendant's actions violate the Fair Housing Act and the Americans with Disabilities Act;

b. Declaring that a group of four or fewer persons with disabilities who live in a dwellings as a single housekeeping unit may do so as of right in an R-1 residential zoning district, without being burdened with conditional use or variance requirements under the CZL;

c. Enjoining the Defendant, its officers, employees, agents, successors and all other persons in active concert or participation with it, from enforcing Sections of the City of Petal's Comprehensive Zoning Law in a manner that discriminates because of disability in violation of the Fair Housing Act and the Americans with Disabilities Act;

d. Enjoining the Defendant, its officers, employees, agents, successors and all other persons in active concert or participation with it, from enforcing the CZL in a manner that denies BHCS's right to operate a home for persons with disabilities as a matter of right at the subject property in the City of Petal in accordance with the CZL, the Fair Housing Act and the Americans with Disabilities Act;

e. Enjoining the Defendant to modify its CZL or the policies and practices by which the Planning Commission and Board of Aldermen implement the CZL by granting reasonable accommodations under the Fair Housing Act and reasonable modifications under the Americans with Disabilities Act;

f. Ordering the Defendant to take all affirmative steps to ensure its compliance with the Fair Housing Act and Americans with Disabilities Act, including steps necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate to the extent practicable the effects of its unlawful housing practices as described herein;

g. Ordering the Defendant to take all affirmative steps to restore, as nearly as practicable, the victims of the Defendant's unlawful practices to the position they would have been in but for the Defendant's discriminatory conduct;

h. Awarding monetary damages, pursuant to the FHA, 42 U.S.C. § 3614(d)(1)(B), and the ADA, 42 U.S.C. §§ 12131 *et seq*., and its implementing regulation, 28 C.F.R. Part 35 to all aggrieved persons; and

i. Assessing a civil penalty against the Defendant in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

Dated: July 28, 2015

Respectfully submitted,

LORETTA E. LYNCH
Attorney General

VANITA GUPTA
Principal Deputy Assistant Attorney General

GREGORY K. DAVIS
United States Attorney
Southern District of Mississippi

STEVEN H. ROSENBAUM
Chief, Housing and Civil
Enforcement Section

MITZI DEASE PAIGE
Chief, Civil Division
MS. Bar No. 6014
Assistant United States Attorney
Office of the U.S. Attorney
Southern District of Mississippi
501 E. Court Street - Suite 4.430
Jackson, Mississippi 39201-0101
601-965-4480 (Office)
601-965-4409 or (601) 965-4032 (Fax)

MICHAEL S. MAURER
Deputy Chief
LORI K. WAGNER, Trial Attorney
Virginia Bar #39446
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Phone: (202) 305-3107
Fax: (202) 514-1116
E-mail: Lori.Wagner@usdoj.gov